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March 13, 1998

**Ex Parte**

OR LATE FILED

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
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MAR 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: CC Dockets 97-121, 97-137, 97-208, 97-231**

Dear Ms. Salas:

At the request of the staff of the Policy Division of the Common Carrier Bureau we are submitting, for inclusion in the above referenced proceedings, the attached white paper which explains the various methods of access to unbundled network elements that Bell Atlantic - New York provides or has proposed to competing carriers. This paper also addresses the issues and questions raised at our meeting with members of the Policy Division staff on February 12, 1998.

Sincerely,

Susanne Guyer

Enclosure

cc: Richard Metzger
Michael Riordan
Richard Welch
Carol Mattey
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March 13, 1998

# White Paper on the Methods of Access Bell Atlantic - New York Provides to Unbundled Network Elements

This white paper explains the various methods of access to unbundled network elements that Bell Atlantic - New York (BA-NY) provides or has proposed to competing carriers, several of which go beyond the requirements of the Telecommunications Act of 1996. It also addresses several other methods of access that have been proposed by various parties, but are not consistent with the Act.

BA-NY allows competing carriers to choose from among several different methods for obtaining access to BA-NY's unbundled network elements. All of these methods enable competing carriers to combine network elements themselves or to use individual network elements in combination with other network elements of their own.

First, BA-NY allows competing carriers to obtain access to unbundled network elements through physical collocation arrangements in central offices where space is available. Competing carriers have a wide range of options for combining individual network elements in a physical collocation arrangement. For example, they can simply run a few inches of wire between terminals on a cross connect panel – and can even pre-wire these connections to eliminate the need to dispatch personnel each time they begin serving a new customer. Alternatively, competing carriers can install equipment that enables them to combine individual network elements from a remote location.

Second, BA-NY is offering smaller (25 square foot) physical collocation nodes that are suitable for use by competing carriers to combine individual network elements supplied by BA-NY. These smaller nodes will be less expensive than standard (100 square foot) collocation nodes. They will also enable more competing carriers to establish physical collocation arrangements in BA-NY central offices with limited space.

Third, BA-NY is offering virtual collocation nodes in all of its central offices, even though the Act only requires virtual collocation in central offices that lack space for physical collocation. As a result, while it is not required to, BA-NY permits competing carriers to choose between physical and virtual collocation arrangements. As with physical collocation, competing carriers have several options for combining individual network elements in a virtual collocation arrangement – including combining them from a remote location to save the cost and administrative burden of dispatching personnel to a collocation site.

Fourth, under the terms of our merger commitment to the FCC, BA-NY will continue to provide shared transport – which is itself a combination of individual network elements – in a pre-combined form for use in providing local exchange and exchange access service. Competing carriers that order shared transport in conjunction with unbundled local switching will not need to combine these individual network elements.

Fifth, BA-NY has proposed extended loop arrangements to competing carriers. These arrangements allow competing carriers to obtain access to unbundled loops to connect back to their own switches in central offices where

they do not have collocation arrangements. BA-NY will connect an unbundled loop in a distant central office to interoffice transport services running back to the central office where the competing carrier has a collocation arrangement. Alternatively, a competing carrier could purchase transport services back to its own location, in which case it would not need to collocate at all.

The methods of access to unbundled network elements that BA-NY offers more than satisfy the Act's requirements, as the 8th Circuit recently interpreted them. The court's decision overturned the FCC order that allowed competing carriers to purchase a complete package, or "platform," of pre-combined elements at unbundled element prices. The court held that the Act's unbundling provision, section 251(c)(3), "does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunications services. To permit such an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn in subsections 251(c)(3) and (4) between access to unbundled network elements on the one hand and the purchase at wholesale rates of an incumbent's telecommunications retail services for resale on the other." *Iowa Utilities Bd. v. FCC*, No. 96-3321, slip op. at 3 (8th Cir. Oct. 14, 1997) ("Rehearing op.").

In addition, the court reaffirmed its earlier decision that an FCC rule requiring local exchange carriers to recombine unbundled elements on behalf of competing carriers "cannot be squared with the terms of subsection 251(c)(3)."

*Id.* at 2. According to the court, the last sentence of section 251(c)(3) – which says that "[a]n incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements" – "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." *Id.* And the court further clarified – by vacating an FCC rule that barred local exchange carriers from "separat[ing] requested network elements that the incumbent LEC currently combines," 47 C.F.R. § 51.315(b) – that the Act only requires local exchange carriers to provide access to individual network elements that have been physically unbundled from one another. *Rehearing op.* at 3.

Notwithstanding the court's ruling, AT&T continues to argue that incumbent local exchange carriers should provide network elements in an already combined form or combine them at the direction of competing carriers. Most recently, AT&T has argued that incumbent local exchange carriers should be required to provide access to network elements that have been "virtually" – but not actually – unbundled. According to AT&T, competing carriers should be given the ability to submit orders to recombine elements "electronically" that already are combined physically. *See* Affidavit of Robert V. Falcone and Michael E. Lesher on Behalf of AT&T Corp., *In the Matter of Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, ¶¶ 113-115 (attached as Exhibit E to AT&T's November 25, 1997 Comments). AT&T's request is nothing more than a ruse to do precisely what the court of appeals has said it may not do.

AT&T is asking that incumbent local exchange carriers be required to turn off the local switch port before provisioning a platform of network elements to AT&T and then allow AT&T to turn back on the local switch port in the preassembled platform of network elements. This so-called "electronic separation and recombining" of network elements that AT&T requests can only occur where the network elements are already physically connected to each other. AT&T is therefore asking to purchase a physically assembled platform of combined network elements, and the 8th Circuit has already ruled that the Act does not permit AT&T to do so.

Second, competing carriers claim that, unless we do the rebundling that the 8th Circuit said the Act doesn't require, we must allow competing carriers into our central offices with screwdrivers in hand so they can, for example, directly connect an unbundled loop to a port on our switch. Competing carriers typically cite a lone sentence in the court's opinion noting that "the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them." Rehearing op. at 2-3. But this sentence can hardly be interpreted as an expansion of our obligation under the Act to provide access to our networks through collocation.

Section 251(c)(3) only requires that local exchange carriers provide "access" to network elements on an unbundled basis, and do so "in a manner that allows requesting carriers to combine such elements" themselves. The collocation arrangement described above does precisely this, and does it in the

way contemplated by the Act itself. In fact, the collocation provision of the Act, section 251(c)(6), requires local exchange carriers to provide for collocation specifically to allow competing carriers to obtain "access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6) (emphasis added).

The Act does not require incumbent carriers to provide every technically feasible method of access to unbundled network elements. Section 251(c)(3) only places a duty on incumbent local exchange carriers to provide "access to network elements on an unbundled basis at any technically feasible point." 47 U.S.C. § 251(c)(3). As the 8th Circuit explained, "this provision only indicates where unbundled access may occur . . . ." *Iowa Utilities Bd. v. FCC*, 120 F. 3d 753, ___ (8th Cir. 1997) (emphasis in original). It does not indicate the method of access incumbent local exchange carriers must provide to unbundled network elements. Only Section 251(c)(6) prescribes the method of access that incumbents must provide to unbundled network elements, and that method is collocation.

The duty to provide collocation does not require local exchange carriers to give competing carriers access to their central office frames. As the Commission's own collocation rules recognize, "[a]n incumbent LEC is not required to permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space." 47 C.F.R. § 51.323(h)(2). Giving

competing carriers direct access to a local exchange carrier's central office frames to hook up their own wires is way beyond the scope of collocation.

Moreover, any requirement to allow competing carriers to occupy an incumbent's central office outside of a collocation arrangement would violate the Fifth Amendment because the Commission does not have such taking authority. Prior to the 1996 Act, the Commission did not have the statutory authority to require local exchange carriers to permit competing carriers to occupy their central offices, such as through collocation arrangements. As the Court explained, "[t]he Commission's power to order 'physical connections,' undoubtedly of broad scope, does not supply a clear warrant to grant third parties a license to exclusive physical occupation of a section of the LECs' central offices." *Bell Atlantic v. FCC,* 24 F.3d 1441, 1446 (D.C. Cir. 1994). The 1996 Act cured this problem by imposing on local exchange carriers "[t]he duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier . . . ." 47 U.S.C. § 251(c)(6). But Congress did not go further and give the Commission additional authority to require local exchange carriers to permit other kinds occupations of their central offices. And the Commission cannot order such takings without express statutory authority.

There are also sound policy reasons why competing carriers should combine network elements in collocation arrangements rather than on a local exchange carrier's central office frame. Competing carriers often claim they

need combined network elements to give themselves the flexibility to replace any of the local exchange carrier's individual network elements with their own. This flexibility will exist only where the competing carrier has itself combined the incumbent's network elements in a collocation arrangement. The competing carrier is then able to begin using its own network elements by transferring the wire that connects the incumbents individual network elements to the competing carrier's own elements in its collocation arrangement. The CLEC could also make this network reconfiguration from a remote location and avoid the need to dispatch personnel to its physical collocation arrangement.

By contrast, a competing carrier cannot substitute its own network elements where the individual network elements it is purchasing from the local exchange carrier are combined on the local exchange carrier's central office frame. In that case, the network elements must be uncombined at the frame and the incumbent local exchange carrier must cross connect the network element(s) the competing carrier wishes to continue using to the competing carrier's collocation arrangement. These steps would be unnecessary where the competing carrier had combined the individual network elements in its collocation arrangement in the first place. They will inevitably discourage competing carriers from deploying their own network elements to offer service enhancements.

In addition, direct access to an incumbents' central office frames would present the danger of have multiple carriers tripping over one another as their personnel work simultaneously on the same central office frame. It would also require the additional cost of security and supervision to ensure that competing

carriers don't deliberately or inadvertantly disconnect service to another carrier's customer or slam a customer by making the wrong connections on the frame.

Finally, some competing carriers claim that providing access through collocation arrangements is inconsistent with another portion of the court's July 18 opinion which held that the Act does not require competing carriers to invest in facilities of their own before they can purchase unbundled elements. *Iowa*, 120 F.3d at 814. It is inconsistent, they say, because a competing carrier necessarily must own some equipment if it has to collocate in order to connect unbundled elements to one another. This argument misstates the court's opinion and ignores the language of the Act.

In the first place, the portion of the order cited by these competing carriers addresses a different issue. There, the court was presented with an argument that section 251(c)(3) "does not enable new entrants to provide telecommunications services to the public entirely by acquiring all of the necessary elements on an unbundled basis from an incumbent LEC;" instead "a competing carrier should own or control some of its own local exchange facilities before it can purchase and use unbundled elements." *Iowa,* 120 F.3d at 814 (emphasis added). The court disagreed, holding that "[n]othing in this subsection requires a competing carrier to own or control some portion of a telecommunications network before being able to purchase unbundled elements." *Id.* Rather, "a requesting carrier is entitled to gain access to all of the unbundled elements that, when combined by the requesting carrier, are sufficient to enable the requesting carrier to provide telecommunications service." *Id.* at

815. On its face, this holding has nothing to do with the method in which competing carriers obtain access to unbundled elements – whether they choose to combine the elements or not – and the court nowhere suggested that the collocation method prescribed by the Act was invalid.

In contrast, the plain language of the Act directly speaks to the issue, and expressly contemplates that competing carriers will, in fact, have to own at least some equipment of their own in order to obtain access to the unbundled elements that they can combine themselves. As a result, the Act imposes a duty on local exchange carriers to provide "for physical collocation of equipment necessary for . . . access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6) (emphasis added).